

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B09 - PLR-133562-02

Date:

August 21, 2002

Re:

Legend

Date 1 =
Taxpayer =

Trust 1 =
Trust 2 =
Trust 3 =
A =
B =
C =
Date 2 =
Date 3 =
\$X =
Accountant =
Date 4 =
Date 5 =

Dear :

This is in response to your letter dated June 5, 2002, requesting an extension of time, pursuant to § 2642(g) of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations, to make an allocation of a Generation-Skipping Transfer ("GST") Tax exemption.

The facts and representations submitted are summarized as follows: On Date 1, Taxpayer created three irrevocable trusts ("Trust 1, Trust 2, and Trust 3"), one trust to benefit each of her three sons and their respective descendants.

Article 3 of Trust 1 provides that the primary purposes of the trust are the support of A and the preservation of the assets for A's descendants.

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Article 3, paragraph A, of Trust 1 provides that the trustee, in its sole discretion, shall distribute or apply the entire net income of the trust to or for the benefit of A and those of his descendants who are living at the time or times of such distributions, in annual or more frequent installments. In addition, the trustee, in its sole discretion, may distribute to or apply for the benefit of A so much trust principal as it deems desirable for A's health and support.

Article 3, paragraph B, of Trust 1 provides that upon A's death, the trustee shall distribute principal and undistributed net income to or for the benefit of any one or more of Taxpayer's descendants (other than A himself), outright or in further trust, and in such shares as A directs by will specifically referring to this provision.

Article 3, paragraph C, of Trust 1 provides that any principal and income not effectively appointed by A under paragraph B shall be allocated upon A's death (1) to his then living descendants, if any, per stirpes; (2) if he has no descendants then living, then to those of Taxpayer's descendants who are then living, per stirpes; or (3) if Taxpayer has no descendants then living, to those of the descendants (other than Taxpayer) of Taxpayer's father who are then living, per stirpes.

Article 4, paragraph D, of Trust 1 provides that any share allocated to a person under paragraph C above shall be held and distributed, as provided in paragraphs A, B, and C above, with that person as the beneficiary for that share, provided that any share allocated to B or C shall be held and distributed to the trustee of Trust 2 or Trust 3, respectively.

The terms of Trust 2 and Trust 3 are identical to those of Trust 1, except that B is the primary beneficiary of Trust 2 and C is the primary beneficiary of Trust 3.

According to Taxpayer's estate plan, Taxpayer was to fund Trust 1, Trust 2, and Trust 3 with equal portions of assets amounting in the aggregate to Taxpayer's GST exemption, so that each trust would have an inclusion ratio of zero and all future transfers from the trusts would be exempt from GST tax. By letter dated Date 2, Taxpayer's estate attorney advised Taxpayer's accountant ("Accountant") that it would be necessary for Taxpayer to file a United States Gift (and Generation-Skipping Transfer) Tax Return ("Form 709") to report gifts made to the trusts and to allocate Taxpayer's GST exemption to those gifts.

On Date 3, Taxpayer transferred \$X in cash and securities to each trust. A Form 709 reporting the Date 3 transfers was timely filed on Date 4, but Accountant inadvertently failed to allocate Taxpayer's GST exemption on Schedule C of the return. A trust officer of the corporate trustee of each trust discovered the failure to allocate Taxpayer's GST exemption in Date 5, when the trust officer received a copy of the gift tax return for his files.

Accountant has signed an affidavit acknowledging the receipt of the attorney's letter and his inadvertent failure to allocate Taxpayer's GST exemption.

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Taxpayer requests an extension of time under § 2642(g) and §§ 301.9100-1 and 301.9100-3 to make allocations of Taxpayer's GST exemption to Trust 1, Trust 2, and Trust 3.

Section 2601 imposes a tax on every generation-skipping transfer (GST). A GST is defined under § 2611(a) as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2631(a) provides that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 (adjusted for inflation under § 2631(c)) that may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 2632(a) provides that any allocation by an individual of his or her GST exemption under § 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for such individual's estate (determined with regard to extensions), regardless of whether such a return is required to be filed.

Section 26.2632-1(b)(2) of the Generation-Skipping Transfer Tax Regulations provides that an allocation of GST exemption to property transferred during the transferor's lifetime, other than in a direct skip, is made on Form 709.

Section 2642(b)(1) provides that, except as provided in § 2642(f), if the allocation of the GST exemption to any transfers of property is made on a gift tax return filed on or before the date prescribed by § 6075(b) for such transfer or is deemed to be made under § 2632(b)(1) or (c)(1), the value of such property for purposes of § 2642(a) shall be its value as finally determined for purposes of chapter 12 (within the meaning of § 2001(f)(2)), or, in the case of an allocation deemed to have been made at the close of an estate tax inclusion period, its value at the time of the close of the estate tax inclusion period, and such allocation shall be effective on and after the date of such transfer, or, in the case of an allocation deemed to have been made at the close of an estate tax inclusion period, on and after the close of such estate tax inclusion period.

Section 2642(g)(1)(A) provides, generally, that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1) or (2), and an election under § 2632(b)(3) or (c)(5). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of this paragraph.

Section 2642(g)(1)(B) provides that in determining whether to grant relief under this paragraph, the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining

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whether to grant relief under this paragraph, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute.

Notice 2001-50, 2001-34 I.R.B. 189, provides that under § 2642(g)(1)(B), the time for allocating the GST exemption to lifetime transfers and transfers at death, the time for electing out of the automatic allocation rules, and the time for electing to treat any trust as a generation-skipping trust are to be treated as if not expressly prescribed by statute. The Notice further provides that taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute). Under § 301.9100-1(b), a regulatory election includes an election whose due date is prescribed by a notice published in the Internal Revenue Bulletin. In accordance with § 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, Taxpayer is granted an extension of time of 60 days from the date of this letter to make allocations of her available GST exemption, with respect to the Date 3 transfers of \$X to Trust 1, Trust 2, and Trust 3. The allocations will be effective as of Date 3, the date of the transfers to the trusts. The gift tax value of the assets transferred to each trust will be used in determining the amount of GST exemption to be allocated to that trust.

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The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. Although this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as specifically ruled herein, we express or imply no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent. The allocations should be made on a supplemental Form 709 and filed with the Internal Revenue Service Center, Cincinnati, OH 45999. A copy of this letter should be attached to the supplemental Form 709. A copy is enclosed for this purpose.

Sincerely,

Heather Maloy

Heather Maloy
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures

Copy for section 6110 purposes
Copy of this letter